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OLC 74-1737

6 AUG 1974

MEMORANDUM FOR: General Counsel

SUBJECT : DCI Briefing of the Subcommittee on Foreign Operations and Government Information of the House Government Operations Committee on 1 August 1974

1. Attached is a copy of the transcript of the Director's testimony (pages 343-418). It is requested that you review for purposes of editorial or other suggested changes.

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2. Also attached are a copy of [] Memorandum for the Record setting forth a rundown of the hearing and follow-up items; and a rundown of the follow-up items as gleaned from the transcript, with specific reference to pages.

STATINTL

3. We have been given a rather short deadline and would appreciate your coordinating with [] ISAS/DDM&S, on the implementation of Executive Order 11652, the status report on the Agency's response to the New York Times' request for declassification of CIA documents on the Bay of Pigs, and the furnishing of the report which we provide the ICRC.

4. Upon completion we will submit the entire package and the transcript to the Director for his final review.

STATINTL

[]
Assistant Legislative Counsel

Attachments: As stated

Distribution:

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CRC, 10/07/2003

FOLLOW-UP ITEMS

DCI Briefing of the Subcommittee on Foreign Operations
and Government Information of the House Government
Operations Committee on 1 August 1974

Transcript

A. Page 364

Moss: Request for submission of language to adequately exempt
Intelligence Sources and Methods from the
provisions of the bill.

B. Pages 367-8

Moss: Request for opinion of court and briefs filed
the Marchetti case.

C. Page 375

McCloskey (on E. O. 11652):

1. What is the percentage of CIA classified documents and materials that fall within the automatic classification?
2. What percentage of that material which employees have been able to review to determine whether it is impossible to say when it can be declassified?
3. What percentage of material is stamped with a date or an event for declassification?
4. Estimate of manhours required to review all this information to reasonably determine whether there is an event in the future or date in the future that it can be declassified?

D. Page 410

Phillips: Requested a copy of the report that we submit to the ICRC.

E. Pages 415-6

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OLC 74-1713

2 August 1974

MEMORANDUM FOR THE RECORD

SUBJECT: DCI Briefing of the Subcommittee on Foreign Operations
and Government Information of the House Government
Operations Committee on 1 August 1974

1. Mr. Colby appeared before the Subcommittee on Foreign Operations and Government Information, House Government Operations Committee, to testify on H.R. 12004, a bill "To amend section 552 of title 5 of the United States Code (known as the Freedom of Information Act) to provide for the classification and declassification of official information in the interest of national defense," and on the operations of the Agency under Executive Order 11652. This open session was held in 2154 Rayburn House Office Building and lasted approximately two hours. A transcript was taken and is on file in the Office of Legislative Counsel.

2. Present from the Subcommittee for all or part of the session were:

William S. Moorhead (D., Pa.), Chairman
John E. Moss (D., Calif.)
Bella S. Abzug (D., N. Y.)
John N. Erlenborn (R., Ill.)
Paul N. McCloskey, Jr., (R., Calif.)
Gilbert Gude (R., Md.)
Ralph S. Regula (R., Ohio)

3. Present from the Subcommittee staff were:

William G. Phillips, Staff Director
Norman G. Cornish, Deputy Staff Director
L. James Kronfeld, Staff Counsel

4. Accompanying the Director were:

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John S. Warner, General Counsel
 Deputy Legislative Counsel

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5. As could be anticipated in a session between a Subcommittee whose prominent members--Moorhead and Moss--have devoted the bulk of their congressional efforts to Freedom of Information, and the Director of Central Intelligence, with the secrecy inherent in the information under his control, a far-ranging record was developed and it reflects a definite plus for the Agency and its legitimate security needs:

a. The preponderance of sentiment on the Committee, with the possible exception of Ms. Abzug's:

1. Conceded that the protection of Intelligence Sources and Methods from unauthorized disclosure is vital to the nation's interest.

2. Conceded the existence of a statutory basis for classification of Intelligence Sources and Methods information. (McCloskey took an exception on National Security Council directed activities under section 102(d)(5) of the National Security Act of 1947, but the Director maintained such activities were causally related.

3. Appeared to be impressed with the initiative and willingness of the Director to make substantive intelligence information available if possible to the public, and where not possible because of security considerations, to the committees and members of Congress.

4. Learned authoritatively that the Agency's proposed Intelligence Sources and Methods legislation does not involve First Amendment constitutional issues, but is aimed exclusively at those who have authorized access, and appeared to have no difficulty with such a limited proposition after the Director pointed to the number of laws on the books making criminal unauthorized disclosure in a number of possibly less important areas (cotton statistics, payments under marketing agreements, and census, crop, and income tax data).

b. The Committee was also impressed with the Director's statement that the closed society of the Soviet Union could learn about our weapon systems by purchasing a copy of

Aviation Week and Space Technology for a dollar, while U. S. taxpayers, to obtain comparable information about the Soviet Union, must pay millions of dollars for costly technical systems which can be and have been rendered ineffective as a result of unauthorized disclosure.

c. Mr. Gude pointed out that the Director is a constituent and that it is indeed fortunate that a man of his caliber and character holds the directorship of the Agency.

6. Areas ripe for contentious possibilities were also pursued and concluded relatively harmoniously:

a. Committee Jurisdiction over CIA

Moss asserted the right of the Government Operations Committee to review the programs of the Agency for economy and efficiency--more, it appeared, to enunciate the principle than as an indicator of a plan to attempt to undertake such a review. The Director noted the existence of unique situations in which operational information is made available to other than our oversight committees, and Moss conceded that this had been done in the past and that he is in close contact with Chairman Lucien N. Nedzi (D., Mich.), Special Subcommittee on Intelligence, House Armed Services Committee.

b. The Extent to which Agency Substantive and Operational Information is Available to all Committees and all Members of Congress

Although the Director made clear the distinction between the handling of operational and substantive intelligence and that some substantive information is made available to members as distinguished from staff, one could select out of the prolonged discussion of this matter a statement supporting the proposition that the Agency would not withhold any substantive intelligence information from any member. Moss made a point of the fact that House rules entitled all members of the House to have access to all committee records and files, thus asserting the right of any member to Agency operational material in the records or files of our oversight committees.

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c. Who is Responsible for Leaks

The Director, in stating that we have found members of Congress very responsible in protecting our classified information, pointed out that we really have a less serious problem from unauthorized leaks within the Congress than we have within the Executive branch--McCloskey applauded this statement.

7. Follow-up Items

There are a number of follow-up items, some of which will take more time to respond to than others. In line with the Director's commitment, we should be able to satisfy the vast bulk of these requirements in short order. It is therefore recommended that as soon as the easy follow-up requirements are ready for transmission, they be forwarded to the Chairman in a letter from the Director indicating that we are working with the Committee staff on the remaining items, i. e., the revisions in the bill and definitions to cover the Agency's vital equities.

For Early Delivery:

- a. Marchetti case: court opinion and brief.
- b. Character of Agency's classified data under E.O. 11652.
 1. Percentage falling within automatic declassification schedule.
 2. Percentage exempted from automatic declassification on the basis of "Impossible to Determine."
 3. Percentage for which downgrading is stipulated at a date or event certain.
- c. Estimate of manhours required to review documents and make declassification and downgrading determinations under E.O. 11652.
- d. Rundown of requests under the Freedom of Information Act (ICRC Report).

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- e. Status of New York Times' request for Bay of Pigs material.
- f. Follow-up questions will be submitted later by the Committee staff (following the session Kronfeld said we would get these perhaps early next week).

For Work with Staff:

- g. Suggested revision of H. R. 12004 to protect the Agency's interests, including more specific definition of Intelligence Sources and Methods if possible.
- h. Submit language which would put Intelligence Sources and Methods on same basis as Restricted Data and Comint.

N. B. --As soon as we get the transcript of the testimony we will review it to make sure that there are no other outstanding requests.



STATINTL

Deputy Legislative Counsel

Attachment:

The Washington Post
article, 2 August 1974,
on Mr. Colby's testimony

Distribution:

Orig - OLC Subject file
1 - DCI
1 - DDCI
1 - DDI
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THE WASHINGTON POST

DATE 2 AUG 74 PAGE 6

This same item came from the watch office

Colby Against Declassifying Speedup

Associated Press

CIA chief William E. Colby yesterday said congressional efforts to speed the declassification of government documents would endanger the country's intelligence operations.

"I would find it very difficult ... to urge a foreign intelligence service or a strategically placed individual in a foreign government or a foreign country to cooperate with this agency and to provide information in confidence if the law of this country required that such information be made available to the public two years later," Colby told a House Government Operations subcommittee.

The subcommittee is considering amendments to the Freedom of Information Act that would require all documents labeled secret and confidential to be declassified within two years.